V E R I F I E D T R A N S C R I P T

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into budget estimates 2010–11

Melbourne — 19 May 2010

Members

Mr R. Dalla-Riva	Mr G. Rich-Phillips
Ms J. Graley	Mr R. Scott
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Chair: Mr B. Stensholt
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Witnesses

Mr R. Hulls, Attorney-General,

Ms P. Armytage, Secretary,

Mr J. Griffin, Executive Director, Courts, and

Ms A. Crouch, Manager, Planning, Performance and Projects Unit, Department of Justice.

The CHAIR — I declare open the Public Accounts and Estimates Committee hearing on the 2010–11 budget estimates for the portfolios of Attorney-General and racing. On behalf of the committee I welcome the Honourable Rob Hulls, MP, Attorney-General and Minister for Racing, and Deputy Premier at the moment; Ms Penny Armytage, secretary, Department of Justice; Mr John Griffin, executive director, courts; and Ms Ann Crouch, manager of planning in the planning, performance and projects unit, Department of Justice. Departmental officers, members of the public and the media are also welcome.

In accordance with the guidelines for public hearings, I remind members of the public that they cannot participate in the committee's proceedings. Only officers of the PAEC secretariat are to approach PAEC members. Departmental officers as requested by the minister or his chief of staff can approach the table during the hearing. Members of the media are also requested to observe the guidelines for filming or recording proceedings in the Legislative Council Committee Room.

All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act and is protected from judicial review. However, any comments made outside the precincts of the hearing are not protected by parliamentary privilege. There is no need for evidence to be sworn. All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript to be verified and returned within two working days. In accordance with past practice, the transcripts and PowerPoint presentations will then be placed on the committee's website.

Following a presentation by the minister, committee members will ask questions relating to the budget estimates. Generally the procedure followed will be that relating to questions in the Legislative Assembly. I ask that all mobile telephones be turned off. I now call on the Attorney-General to give a brief presentation of no more than 5 minutes on the more complex financial and performance information that relates to the budget estimates for the portfolio of Attorney-General.

Overheads shown.

Mr HULLS — Thanks, Chair. I have a couple of slides. The first slide talks about the part of the justice budget that relates to A-G. You can see that the reforms and service delivery responsibilities of my department are supported through funding that makes up just over 24 per cent of the total DoJ budget. You have probably seen that slide from Bob Cameron, I expect. The next slide talks about how the justice statement has five key areas of focus: modernising justice, protecting rights — they are there.

Before outlining the key elements of the budget, I just want to detail some of the achievements that have been delivered across each of those areas. In relation to civil justice, I said previously here for too long the adversarial system has been at the heart of dispute resolution. We want to move away from that to appropriate dispute resolution. As a result we have expanded mediation services through the Dispute Settlement Centre of Victoria right across the state, with mediators now accredited under the national mediator accreditation scheme. We have introduced legislation in relation to civil justice reforms, and we have enabled courts to have power to implement a range of ADR techniques.

In relation to law and order, which is the slide after that, our law and order policy is fairly simple: tough on crime, tough on the causes of crime. In that area there are a number of important reforms now in place. That sends a clear message that crime does not pay. Offenders are brought before the courts more quickly. That frees up court and police time. It also ensures that underlying causes of crime are dealt with.

Asset confiscation — in the past decade the estimated value of criminal assets frozen in Victoria has increased from $3.5 million in 2000 to $53 million in 2009. There will also been tough asset confiscation laws that will further strengthen what we have, including new anti-avoidance powers; new powers for police to seize lawfully acquired property as a substitute for property used in a crime; strengthening the information gathering powers of bodies; and also more robust civil forfeiture powers, which would include confiscation of items likely to be used in future criminal activity.

There is new Criminal Procedure Act; radical reforms have been made to criminal procedures to slash paperwork and also to streamline court proceedings in getting alleged offenders to court more quickly, which frees up police time as well. The Crimes Act review is a comprehensive review of the updated offences right across the statute books to make them clearer, simpler, more effective and more consistent.

We are also reviewing the maximum penalties for these offences through the Sentencing Advisory Council. Court resources I will talk about later; there is substantial increase in court resources. It is a holistic approach. When I said 'underlying causes of crime', there is the Neighbourhood Justice Centre, the assessment and referral list, things such as the court integrated services program, all about addressing the causes of criminal behaviour.

As far as victims are concerned, we have continued to support victims' movement from the periphery of the justice system to the centre. It includes not just the victims charter but the right of victims to read aloud their victim impact statements in court and to include photographs or recording to demonstrate the impact of a crime. Since we reinstated pain and suffering compensation for victims, there has been $108 million allocated to over 22 500 applicants. Also, as far fines are concerned, the recent fee waiver recovered something like $100 million.

There is the charter of human rights. Despite doomsayers, the sky has not fallen in as a result of the charter. It is improving outcomes throughout the state, particularly through the public service. And equal opportunity reforms — the bill — were passed in the Parliament on 15 April.

Lastly, this year's budget has an additional $50 million over the next two years for Victoria Legal Aid, which is a huge increase. Again it shows a strong commitment to legal aid. There is $11 million over the next four years to consolidate a new approach to dealing with Children's Court matters. I do not know if Lisa Neville spoke about that, but this will be part of a new mediation system in the Children's Court. There is the $60 million we are investing in our courts to manage growth in demand. That includes extra judicial officers and also setting aside funds for personal safety intervention orders. Also, there is $2 million in the budget for a legal services master plan, which provides long-term planning for courts infrastructure in metropolitan Melbourne and regional Victoria. That is a snapshot of what has occurred and a snapshot of what is in the budget. I am happy to try to answer any questions.

The CHAIR — Thank you very much, Attorney-General. We are interested in what is in the budget, as this is an estimates hearing. We did ask your colleague about what plans and strategies you had, and the secretary gave us an outline of the plans and strategies for the department as a whole, which included your portfolio. If there is anything to add, I hope that can be done on notice.

I want to particularly ask about the courts. This committee has taken a strong interest over several years in the management of the courts. I think we have even recommended and encouraged the Auditor-General to look at the performance of the courts in terms of delays and access to justice in Victoria. I notice in budget paper 3 on page 146 there is the output measure 'court matters and dispute resolution'. I want to see what is in the budget in terms of meeting the increasing demand, addressing delays and speeding up access to justice here in Victoria. You can tell us about what level of resources and additional resources you may be applying to meet that.

Mr HULLS — The recent report on government services shows that the government's massive investment of more than $3.5 billion in the court system since 1999 is bearing fruit. A key indicator of court performance is clearance rates, and Victorian courts are finalising more cases than ever before. We have the second-highest criminal clearance rate across the nation.

The Supreme Court has the highest clearance rate in Australia, the County Court achieved its highest criminal non-appeal clearance rate for four years, the Magistrates Court had a record high level of criminal finalisations and the clearance rate for criminal matters in the Children's Court was ranked first nationally. But of course more needs to be done in this area to tackle backlogs and meet increasing demands. With more police on the streets obviously more cases are reaching court and that increases demand.

That is why in the budget this year we allocated a further $62.3 million to fund six new judicial officers and to reduce delays in the court system. What we allocated is as follows: the County Court will get two extra judges and two sexual assault list coordinators to boost that court's capacity to meet increased demand arising out of legislation that, as you know, we passed to prioritise sexual offence cases, so that will assist there.

The Supreme Court will get two new judges, one trial and one appellate judge. Two new magistrates will be appointed, one for the Magistrates Court and one for the Children's Court. On top of that there will be some $2 million allocated for a legal services master plan which will detail the need for more court facilities, including multipurpose court buildings in growth suburbs of Melbourne and regional cities.

I can also say — I do not know if you have been asked about it; I certainly have — what is going to happen with the royal commission rooms that are currently being occupied. At the conclusion of the royal commission its two hearing rooms will be retained by the government as a modern multi-jurisdictional court facility. The hearing rooms can accommodate large numbers of parties, as well as members of the public and also the media, and are fitted out with state-of-the-art audiovisual and IT systems. These extra courtrooms will provide flexibility for a variety of cases and will help reduce delays. We think that that is an appropriate use of that facility. There has been some talk about what will happen when the royal commission finishes.

There has been a massive increase in relation to court resources, not just since we have come to government but in this year's budget. We think that will go a substantial way to further address increased demand, as well as other reforms that will be implemented to get things on more quickly and the like, but there is a substantial increase in judicial resources.

The CHAIR — We look forward to the national reports in future years showing improvements.

Mr RICH-PHILLIPS — Minister, I refer to the legal policy, advice and law reform output group in budget paper 3, page 141, and I refer to this morning's decision by the Supreme Court to set a sentence of a minimum period of only eight years for Luke Middendorp who was convicted of defensive homicide, which is supposed to relate to excessive use of force in self-defence, after he stabbed his ex-girlfriend four times in the back.

I also refer to the cases of Callum Smith, who pleaded guilty to defensive homicide after he stabbed Christopher Leone more than 40 times — he was found to be suffering from schizophrenia and was sentenced to a non-parole term of just four-and-a-half years — and the case of Gordon Spark, who pleaded guilty to defensive homicide after killing his grandfather with a baseball bat, dismembering him with an axe and profiting $8000 in cash, and was sentenced to a minimum of less than five years.

Would you agree that your law of defensive homicide has turned out to be another soft-on-crime debacle, and will you allocate funds within the legal policy output group to fix what is yet another huge legal loophole of your making?

The CHAIR — The Attorney-General, as far as it relates to the estimates.

Mr HULLS — If you actually recall the law reform commission's report in relation to this matter, when we decided to abolish provocation as a partial defence to murder, the law reform commission recommended that that occur and the law reform commission also recommended that there be changes in relation to the law of self-defence. You will probably recall that in relation to self-defence, self-defence was a full defence to murder. A person, if they were able to raise the issue of self-defence successfully and they had been charged with murder, would be convicted of nothing — that is, it was murder or nothing.

In relation to the suite of reforms that were recommended by the law reform commission, those suite of reforms included abolishing provocation which — as you would know and I have said this publicly — was often used by misogynist males as an excuse for violently assaulting and killing women. It was used as an excuse.

Mr RICH-PHILLIPS — As distinct from this case, as distinct from the Middendorp case.

Mr HULLS — Whereas in relation to defensive homicide, with defensive homicide a person can be convicted of an offence even though they attempt to raise self defence. Previously people who were successfully raising self defence as a defence would either be convicted of murder, if they were not able to raise it successfully, or, if they were, would go free. The law reform commission recommended this new offence, defensive homicide, whereby if a person is able to raise defensive homicide, they do not go free — they are actually convicted of manslaughter.

Mr RICH-PHILLIPS — So eight years is sufficient for killing a girlfriend?

The CHAIR — Without assistance!

Mr RICH-PHILLIPS — And five years is sufficient for killing a grandfather and dismembering the body?

Dr SYKES — That is disgraceful.

Mr HULLS — One of the arguments is that if defensive homicide did not exist, people could be charged with an offence and raise self defence successfully and get off scot-free.

Dr SYKES — You have not fixed the problem.

The CHAIR — Without assistance, please! The Attorney-General, to continue.

Mr RICH-PHILLIPS — Five years for killing and dismembering the body!

The CHAIR — Without assistance, please!

Mr HULLS — A person who successfully raises a defence of defensive homicide, which was introduced following the recommendations of the law reform commission, can be sentenced for manslaughter, and the penalties that can be imposed for manslaughter are extremely serious.

Mr RICH-PHILLIPS — Yes, four and a half years or five years!

Mr HULLS — You asked about particular penalties that have been imposed — as you would know, I am a firm believer in judicial discretion and a firm believer in judges making decisions in relation to sentencing. I am vehemently opposed to mandatory sentencing.

Dr SYKES — Soft on crime.

The CHAIR — Without commentary!

Mr WELLS — Obviously there is a soft-on-crime approach.

The CHAIR — Without assistance! Ignore interjections, please, Attorney-General; they are unparliamentary.

Mr RICH-PHILLIPS — Does a sentence of four and a half years meet community expectations? Does a sentence of eight years meet community expectations?

The CHAIR — Continue your answer, please.

Mr HULLS — What I can say is — in line with the law reform commission's recommendations — there was a suite of reforms abolishing provocation, which we believe was absolutely appropriate, and the introduction the law of defensive homicide following the recommendations of the law reform commission. It recommended that that be an alternative homicide offence to murder. There is a new offence, an alternative verdict, of defensive homicide, which provides a jury and sentencing judge with more options from the former all-or-nothing approach, which existed in relation to self defence.

The CHAIR — Thank you, Attorney-General.

Mr RICH-PHILLIPS — Is eight years for killing an ex-girlfriend consistent with community expectations? Eight years for killing someone — is that consistent with community expectations?

Mr WELLS — It is a clarification.

The CHAIR — Let me chair this, Mr Wells, thank you very much. Do you wish to make a clarification, or have you finished your — —

Mr RICH-PHILLIPS — No, I would like the Attorney-General — —

The CHAIR — Through the Chair!

Mr RICH-PHILLIPS — I would like the Attorney-General to confirm if eight years for admitting to killing an ex-girlfriend is consistent with community expectations.

The CHAIR — I think the Attorney-General has answered the question.

Mr WELLS — No, he hasn't.

Mr RICH-PHILLIPS — He has not answered that at all.

Mr HULLS — Either you believe in judicial discretion or you do not.

Mr RICH-PHILLIPS — Four and a half years for killing a grandfather and dismembering the body!

Mr WELLS — It has to be in line with some community expectations.

The CHAIR — Mr Wells, without assistance!

Mr HULLS — Either you agree with judicial discretion or you do not.

Mr RICH-PHILLIPS — He killed his grandfather with a baseball bat, dismembered him with an axe and got five years!

The CHAIR — Without assistance!

Mr HULLS — I understand you do not; I understand you are a believer in mandatory sentencing, and you are entitled to your view. I am not; I am a firm believer in judicial discretion.

Mr RICH-PHILLIPS — Is five years consistent with community expectations?

Mr WELLS — What we want is the expectations of the community and fairness in the justice system.

Dr SYKES — We want to be tough on crime.

The CHAIR — Without assistance, please!

Mr HULLS — Indeed, in believing in judicial discretion I also believe in the appropriate checks and balances that exist in our justice system whereby we have an independent DPP. If the DPP on reviewing a matter believes that a sentence is inappropriate, the DPP has the power to appeal.

Mr WELLS — Why not get it right in the first place!

Mr NOONAN — Attorney-General, I wanted to ask you about the Children's Court. In particular there is a reference in budget paper 3 on page 323 under 'Output initiatives' for the Children's Court dispute resolution. I wonder for the benefit of the committee whether you can elaborate on the use of mediation in the Children's Court and how the initiative responds to the recommendations of the child protection task force?

Mr HULLS — It is an important question because there are few jurisdictions, I think, that are as challenging as the Children's Court. As you would know, contested cases are much more bitterly fought, and there is a substantial amount of emotion in the Children's Court because the court is deciding whether or not to remove a child from his or her family.

The Ombudsman in his report said that there is no perfect child protection system, but he made a number of recommendations. I am sure Minister Neville has addressed those. We wanted to go further and wanted to take immediate action in relation to the perceived adversarial nature of the Children's Court. We established the child protection proceedings task force, comprising the president of the Children's Court, the managing director of legal aid, the child safety commissioner, the Department of Human Services and Penny as Secretary of the Department of Justice to report back on non-adversarial processes.

The task force was asked to recommend measures designed to reduce the adversarial nature of court processes, including options for appropriate dispute resolution, measures that could reduce the time that parties spend in the Children's Court and measures for the Department of Human Services to further support child protection workers in the court process.

The aim of the work of the task force was the safety of children, and I think it has done a very good job and presented recommendations that will have a significant impact. In this budget we have provided $11.2 million over four years to fund a new mediation model for the Children's Court. This will provide, I think, a less adversarial process to manage child protection cases. It will encourage parties to reach their own decisions with the best interests of children being paramount.

I do not know if you have been to the Moorabbin justice centre, but it draws on the model of the mediation pilot we set up there. It will promote a more collaborative approach between practitioners in the court setting and will ultimately reduce delay. Also there will be a new conference model, which will allow conferences at venues away from the court. What often happens at the Children's Court is that conferences that place at the Children's Court itself; anyone who has been to the Children's Court will know there is a lot of calling cases on and matters moving around the court on a regular basis — it is very difficult to actually have a complete focus on a conference.

So conferences will take place offsite. There is funding for that. They will be conducted by trained and accredited conveners. More time will be allowed for discussions. Also there will be improved training for legal aid and Department of Human Services staff who are engaged with the court. We believe all this will lead to a more collaborative approach in the Children's Court. I also gave a reference to the law reform commission, based on the Ombudsman's recommendations, to look at alternative models for child protection legislative arrangements that would reduce the degree of disputation in Children's Court matters and encourage a focus on the best interests of children. The commission will be reporting to the government by the middle of this year in relation to that. The $11.2 million we think will lead to a more collaborative, less adversarial approach in the Children's Court.

The CHAIR — Just before I pass on to the next question, I remind the committee that the procedure is to ask a question and do it in silence, and the Attorney-General is to respond, and respond without assistance, so I would ask members to follow that, which is the normal procedure of this committee.

Mr WELLS — How come you did not give that warning before you asked the Labor person to ask a question?

Mr DALLA-RIVA — That is a valid point.

The CHAIR — It is a valid point. I just took the next opportunity that I had to do that.

Mr WELLS — Because it was my question?

The CHAIR — It happens to be your question, yes, it does, but you are obviously completely ignoring what I just said, which is very unfortunate. I ask you and the other members of the committee — and I do not really care which party they represent or indeed who they are — or indeed any witnesses to conform to the procedures of this committee, which are well set down and should be followed. Mr Wells has the call.

Mr WELLS — Thanks, Chair. Attorney-General, I would like to ask you about suspended sentences. You made an announcement on 14 May, and I would like to know the impact of suspended sentences on the forward estimates, so I wonder if you could clarify a number of points for me. With your announcement I understand that the government will abolish the exceptional circumstances exemptions for serious crimes as of 1 July 2011 and that you will also introduce new provisions for intensive corrections orders, which will also take place on 1 July 2011, but is it also correct that the government has not given any specific commitment as to when it will abolish suspended sentences for other crimes, and is it correct that under your announcement that you made on 14 May offenders will still be able to walk out of court scot-free on suspended sentences for offences such as recklessly causing serious injury, aggravated burglary such as home invasion, arson and commercial drug trafficking?

Mr HULLS — I think it is important to remember the history of this just so we get the facts right. It is true that we made an announcement just last week in relation to suspended sentences. The Sentencing Advisory Council released its review of suspended sentences, part 1, in 2006, and that report recommended, amongst other things, the phasing out of suspended sentences over three years. That was in 2006.

The immediate action we took at that time was to abolish suspended sentences for serious matters unless there were exceptional circumstances. That was done to guide the exercise of courts in relation to suspending a term of imprisonment in relation to serious matters, and the presumption was against wholly suspending a term of imprisonment for a serious offence, based on those recommendations.

In 2008 the Sentencing Advisory Council released another report — its final report — and it moved away from the abolition of suspended sentences immediately and recommended a suite of other changes to the sentencing

system. It noted in its report significant opposition in the legal community to the complete removal of suspended sentences and described the potential resulting increase in Victoria's prison population if you just removed suspended sentences without any other alternative sentencing arrangements as, to use its word, 'catastrophic'. That is the word the Sentencing Advisory Council used. It also recommended the continued monitoring of the use of suspended sentences following the legal changes we made in 2006.

That is the background. It is still recommended that they be abolished but after new sentencing options are put in place. I made public statements at the time that, 'Look, suspended sentences are confusing to the public because a judge imposes a term of imprisonment on somebody because they believe the offence is so heinous, if you like, that a term of imprisonment is warranted'. The judge has to say, 'I sentence you to jail, but then I fully suspend it', no conditions attached, and the person walks free, and of course the Victorian public are perplexed and bemused. They say, 'Hang on. A judge believed this person should go to jail, and yet they are walking out of court'. So as a result, I said at the time, and I maintain, that when a judge says jail, jail should mean just that — it should mean jail. If a judge does not want to send you to jail because there are exceptional circumstances, and there often are, then a judge should be able to tailor a sentence to meet the specific needs of, obviously, the perpetrator of the crime, but also take into account victims' expectations and the like.

We moved legislation to implement the recommendations of the Sentencing Advisory Council which included stand-alone orders. One of the those stand-alone sentences — and you would know about it because you vehemently opposed it — was home detention. One of the options that the Sentencing Advisory Council said you need to give to judges is home detention as a stand-alone order, not just as a back-end order.

You and the opposition vehemently opposed that until two weeks ago when you actually supported the legislation for home detention as a stand-alone order, and I am pleased with that because it means that you agree — —

The CHAIR — Without — —

Mr WELLS — No, let him believe it. I can assure you the Liberal Party is not soft on crime.

The CHAIR — Answer the question, please, Attorney-General, without debating.

Mr HULLS — I am very pleased that you backflipped on home detention, because it meant — —

The CHAIR — Attorney-General!

Mr WELLS — You have got some bad news coming.

Mr HULLS — Because it meant that we could then proceed to implement the other sentencing options outlined by the Sentencing Advisory Council. What the Sentencing Advisory Council also said was there should be a stand-alone order, an intensive corrections order. As you would know, at the moment an intensive corrections order is a bit like the myth that is perpetrated with suspended sentences where to impose an intensive correction order now a judge has to say, 'I sentence you to jail, but I will then have you assessed for an intensive corrections order'. What Arie Freiberg and the Sentencing Advisory Council says is that intensive corrections orders should be stand-alone orders in their own right, and there should be conditions attached, and there should be a whole range of flexibility associated with those conditions.

He also recommended that there be a change to breach proceedings whereby we further strengthen truth in sentencing. The other catalyst by the way was the Sentencing Advisory Council's monitoring report, which we only got last week. We released it on the same date that we announced further changes. He said in this report that despite the government's moves in 2006 to abolish suspended sentences for serious offences, unless there has been exceptional circumstances, there has not been a diminution of the use of suspended sentences for serious offences.

I do not know if you have read it, but he cites a whole range of case studies where exceptional circumstances have been found. Some people here would agree that these are exceptional circumstances; others would say they are not. We announced that we would be abolishing by 1 July next year suspended sentences for serious matters. That is what we will do. There is a cost associated with that. There will be a budget update I think in November once we work through all of the ramifications and whether or not there are offsets as well.

We have already increased the budget for prison beds in this budget. I was asked the question last week will more people go to prison as a result of this? I will say what I said last week. I expect that that is a real possibility, but to be able to quantify again is difficult because of the specific circumstances of each case that a judge will take into account.

In relation to the issue you raised about serious offences, yes, there is a list of serious offences that are currently set out in the legislation. That is in the Crimes Act. But currently there is a review of the Crimes Act now. We are looking at whether or not all current sections of the Crimes Act and offences are appropriate and whether or not maximum penalties are appropriate. Obviously that legislation that comes into effect in July will tailor, I expect, some of the findings of the current review in relation to the Crimes Act.

You asked will that mean that people will still be able to get suspended sentences. What we have said is that we are getting rid of suspended sentences for serious offences, so that discretion to find exceptional circumstances will no longer exist, but we are putting in place a whole range of other sentencing options. I expect that — and it is our ultimate aim to get rid of suspended sentences fully — as a result of the announcement, firstly, and secondly, the implementation of legislation, you will see a dramatic reduction in the use of suspended sentences. They will not be able to be used for serious offences. I think you will see a dramatic reduction right across the board.

But it is absolutely crucial from a justice point of view and from a judicial discretion point of view that you give judges other sentencing options. As Arie Freiberg said, you cannot just abolish suspended sentences and not give judges other options because to do so would be, in his words, catastrophic. It is not just Arie Freiberg. You would know that the Sentencing Advisory Council is made up of Arie Freiberg and also representatives from victims groups, representatives from the defence, representatives from the prosecution and the like. We think we have got the balance right.

As part of that announcement, we are also getting rid of the mandatory jail sentence for driving whilst disqualified for the second time. There is something like 2400, if you like, mum-and-dad drivers who are sentenced to a mandatory term of imprisonment for driving whilst disqualified. But what magistrates are doing is saying, 'Look, we have got no choice. We have got to send you to jail because you have driven whilst disqualified for your second offence. But we do not believe you should actually go behind bars. We believe to ensure that we are complying with the act we are going to sentence you to jail but give you a suspended sentence'. Again, I think that confuses the public because the public think jail should mean jail. That is one of the problems with mandatory sentencing by the way. So we are going to get rid of that mandatory jail for the second offence of driving whilst disqualified and put in a whole range of other options. A magistrate will still be able to send you to jail for driving whilst being disqualified, but it will not be compulsory; it will not be mandatory.

We think this whole suite of options is appropriate. It will absolutely convey truth in sentencing. When a judge says jail, you are going to go to jail.

Mr WELLS — Just as a clarification — —

The CHAIR — Very quickly. We have spent 11 minutes on this so far.

Dr SYKES — It is the minister's choice.

Mr WELLS — It is the minister's answer, with respect. Minister, can you just clarify that under your announcement an offender will still be able to walk out of court scot-free on a suspended sentence for offences such as causing serious injury, home invasion, arson and commercial drug trafficking. Can you just clarify that?

Mr HULLS — A judge will not be able to sentence a person to a suspended sentence for serious offences. They will have no choice, but if they believe a person should go to jail for a serious offence, that person will have to go to jail. Serious offences are currently defined in the legislation, but there is a review in relation to the Crimes Act now. It is one of the most comprehensive reviews that will look at serious offence provisions. It will also look at maximum penalties.

Mr WELLS — So in the meantime these people will walk scot-free?

The CHAIR — I think the minister has answered the question twice.

Mr SCOTT — My question relates to legal aid. Minister, I refer to your presentation where you mention legal aid. I ask if you can outline the measures the government has taken to ensure that state-funded legal aid services are maintained in the face of significant growth in demand for legal aid over the estimates period.

Mr HULLS — Legal aid is obviously an ongoing battle because as a state government we have always maintained a passionate commitment to ensuring Victorians have equal access to justice. I was very pleased to provide a further $49.9 million in legal aid funding over two years which was announced in this budget. On any measure I think this represents an extraordinary boost in legal aid funding in this state.

The additional funding provided in this budget boosts the Victorian government's contribution to legal aid to record levels — more than $68 million per year in 2010–11 and 2011–12. When the annual contribution from the public purpose fund is added, Victoria Legal Aid will receive something like $200 million in total state-sourced revenue over the next two years. This of course will deliver better access to justice to more Victorians, particularly the vulnerable and disadvantaged, and it provides VLA with the certainty that they need to plan for the delivery of services into the future. I have said this to this committee before that legal aid is fundamental to the effective and efficient running of our courts and improving justice outcomes for disadvantaged Victorians.

Over the last 10 years there has been a huge increase in legal aid funding delivered by the state of Victoria. However, I have to contrast that with the federal contribution. I am displeased to say I suppose that the federal government really was left with a massive unpaid bill after years of underfunding of legal aid from both the Howard and Ruddock regimes, and it will not be cheap to repair the damage. It is the responsibility of all governments to fund legal aid.

In the federal budget — and this is important because it adds to our state budget contribution — the federal Attorney-General is to be commended for his increase to the national legal aid funding pool and he has increased that to eight state and territory legal aid commissions by $26 million, which is 13.6 per cent. He has pledged $42 million of that to come to Victoria and I think that is a good start, but it is nowhere near enough.

There is still much to be done to bring the commonwealth funding to sustainable levels to address the inequitable share of federal funding that we get in Victoria. We get the lowest funding from the feds per head of population of any state. Not only that, commonwealth funding is tied to commonwealth-related law matters. So they need to loosen up those requirements as well. Just to put it into some perspective, a decade or so ago the commonwealth provided about 45 per cent of annual legal aid funding to Victoria and the state 55 per cent. Now the feds provide 25 per cent and the state 75 per cent. You can see the huge shift. So I welcome the feds' increase. It is not enough, but I am very pleased that we were able to allocate almost $50 million extra for legal aid in Victoria. It is very important.

Mr DALLA-RIVA — I want to go back to, in the forward estimates, your copying of the coalition policy on suspended sentences. I note some of the concerns that are in the forward estimates about the costings, because you seem to have released a policy on the run without costing it. So perhaps you can explain what costs the government is going to budget for, following on from your copied announcement; and leaving aside any offset from changes to asset confiscation laws, how much will there be for extra costs from closing the exceptional circumstances loophole for serious offences, for the increased costs of prison beds, for the increased cost of administering the intensive corrections orders, or the community-based orders, instead of the suspended sentence, and how much for the cost of abolishing the suspended sentences other than for serious offences?

Mr HULLS — Your premise is an interesting one, but it is just wrong. To be saying that the opposition's policy is the same as the government's is just wrong. It is just not right. Because what the opposition promised is — —

Mr WELLS — We promised to abolish suspended sentences. You came out five months later and have done exactly the same.

The CHAIR — The Attorney-General to answer the question without provocation and without provoking.

Mr DALLA-RIVA — Sounds like the police.

Ms PENNICUIK — Bad policy on both counts.

Mr WELLS — Yes, same as our police force.

The CHAIR — Can we not have a conversation around the table? This is a matter of questions being asked and answers being given.

Mr DALLA-RIVA — Desal.

Mr WELLS — Desalination plant.

The CHAIR — Thank you very much. Are we ready again?

Mr HULLS — What the opposition promised was lightweight, not thought through and not holistic.

Mr DALLA-RIVA — So tell us the costings.

Mr WELLS — Tell us the costings.

Mr HULLS — Not holistic.

The CHAIR — Without assistance.

Mr WELLS — Give us the costings — —

The CHAIR — Interjections are unparliamentary. I have already asked that questions be heard in silence, as the last one was, and answers should be heard in silence as well. Interjections and provocations are unparliamentary.

Mr HULLS — Because, you see, if you simply have a simplistic policy of abolishing suspended sentences without any alternatives, first of all it means that those 2400 mum-and-dad drivers would go to jail because it is mandatory. It is mandatory that they go to jail under the current law. I do not know if you have read it. I do not know if you have read the law, but it is mandatory that if you drive whilst disqualified for a second offence a person must be jailed. So if you simply stand on a soapbox and say, 'Guess what? We are going to abolish suspended sentences without any alternatives', you will have 2400 mum-and-dad drivers per year going to jail. That is the first thing. You seem astounded by that. That is the truth.

Mr WELLS — We are waiting on you to announce the costings — —

The CHAIR — We are not having a conversation.

Mr WELLS — We are waiting on the costings. Come on.

The CHAIR — Just answer the question.

Dr SYKES — Tell us something. Tell us the truth, the whole truth.

Mr WELLS — Just give us the costings. Then we will be astounded.

The CHAIR — Without assistance from the rest of the members of the committee.

Mr WELLS — We just need an answer — —

The CHAIR — Will you please listen for a change?

Mr WELLS — We just want a straight answer with regard to costings.

The CHAIR — Mr Wells! Dr Sykes, I am surprised at you.

Mr HULLS — Right. So that is the first thing that will occur. That is why, as part of the package, we are getting rid — —

Mr RICH-PHILLIPS — So you are a hoon if you are 5 kilometres over but you are a mum-and-dad driver if you drive whilst disqualified — —

The CHAIR — Without assistance,

Mr WELLS — Exactly. It is amazing, isn't it?

Mr HULLS — We are getting rid of mandatory jail if you drive whilst disqualified— —

Ms PENNICUIK — It is a good thing. Get rid of that. Keep the suspended sentences.

Mr HULLS — So that is the first thing that we are doing.

The CHAIR — I am also surprised at you, Ms Pennicuik.

Mr HULLS — It is good to see there is some support for that. The second thing that we are doing is ensuring that judges actually have options at their disposal — —

Ms PENNICUIK — You are taking it away.

The CHAIR — Without assistance.

Mr HULLS — That will ensure that they have more discretion rather than less. If you actually speak to the judiciary about this, the judiciary have said that they would have preferred in the past to be able to put conditions on people when they do not want to send people to jail. The fact is that they — that is, the judiciary — want to be able to have a whole suite of options that better tailors the sentence to the needs of the person who is being sentenced.

If you have a look at some of the exceptional circumstances in Arie Freiberg's report: as horrific as they may sound, you have, for instance, an aged gentlemen who is charged with and convicted of manslaughter — a serious offence — because he has been living with his wife who has had cancer for years and years, she is in agony and has been for years, and he ends her life in what he believes is a humane way. She begs him to end her life. He nonetheless is convicted of manslaughter.

Under the current regime if you get rid of suspended sentences and do not replace them with anything else, that person would go to jail. Some in the community would say that is appropriate, and some around this table might think that it is appropriate, but if you give judges better alternatives that are better tailored to the needs of the exceptional circumstances, we believe that is far fairer and more appropriate. There are a whole range of other examples there that I will not detail.

The CHAIR — We do not need to. We do need to come onto the question.

Ms PENNICUIK — That is a perfect argument for suspended sentences as far as I can see.

Mr HULLS — The government has allocated something like $17.8 million over four years for extra prison beds, $57 million over four years for extra women's prison beds and also some asset measures as well — $21.7 million for women's prisons, and $28 million for men's.

Dr SYKES — Is that a consequence of the suspended sentence policy changes?

Mr HULLS — That is something that the government has put in this budget, but what you have said is — —

Dr SYKES — Are they in relation to your policy announcement or not?

Mr WELLS — If it goes to this policy announcement, is what we are asking.

The CHAIR — The Attorney-General, to answer.

Mr HULLS — What you have asked is: what are the final costs, in effect, of the announcement? Obviously the final costs are going to depend on the legislation that is introduced into Parliament later this year. As you

would know, sentencing reform takes some years to fully come into effect. The reforms abolishing suspended sentences will apply to the sentencing of offenders who have committed an offence on or after the commencement of the reform. It will not be retrospective legislation; it will apply to offences that are committed on or after 1 July. As you would know, because I think you have — —

Mr WELLS — You have no idea how much this is going to cost?

Mr HULLS — No, as you will know — —

The CHAIR — Without assistance, please.

Mr WELLS — You have no idea how much this policy is going to cost.

The CHAIR — Without assistance. The Attorney-General is answering. We would like it to be done without assistance.

Dr SYKES — No idea!

Mr HULLS — As you would know — because I think the police minister was asked this as well — —

Dr SYKES — He had the same answer: no idea!

The CHAIR — Without assistance!

Mr HULLS — The 2010–11 state budget represents obviously current government policy. The announcement in relation to the Sentencing Advisory Council's recommendations came after the budget, as you would know.

Dr SYKES — Two weeks after.

Mr HULLS — It came the same day as the monitoring report was released. That was post budget. In relation to the cost of the policy, that will be assessed by the government and appropriate levels of funding will be made available to the Department of Justice in support of this policy. They will be reported in the 2010 pre-election budget update, which is a requirement — as you know — of the Treasury secretary to publish following issue of the election writs to be published in November 2010.

The next budget will contain specific funding in relation to this policy initiative, but it is true to say that there will be tens of millions of dollars of costs associated with this initiative, because there will be more monitoring in the community subject to the flexibility of the orders, more monitoring in the community, more flexibility of sentencing — that has a cost associated with it, but it is all about truth in sentencing, because it means that if a judge says 'Jail', you go to jail.

Ms PENNICUIK — Minister, in budget paper 3, page 26, there is $60 million over four years for the courts — I think you call it 'Managing court demand' in your handout. My question is in regard to the Coroners Court. Given the Coroners Act has been substantially changed and there are new obligations on the Coroners Court in terms of dealing with families et cetera, how much extra resources have been allocated to the Coroners Court to implement the new act in terms of dealing more fairly and more intensely with families that are caught up in the coroners inquests, and also whether there are any particular performance measures drawn up in regard to implementation of the new act, particularly given the Auditor-General has in his report on performance measures and departmental reporting probably put the Department of Justice in the middle of the departments in terms of performance in that regard.

Mr HULLS — There are two questions there.

Ms PENNICUIK — I always like to get two in one!

Mr HULLS — That is fine. One is in relation to major reform that has been undertaken of the Coroners Court, which refers to some of the backlogs, and also budget allocations.

A number of factors have contributed to the increase in deaths reported to the coroner in the past 12 months, and that has increased its workload, including obviously the tragic deaths that occurred as a result of Black Saturday

but also the number of deaths that were reported to the coroner prior to that because of the heatwave that we had.

Referrals to the coroner from the registry of births, deaths and marriages increased to 787 — that is, 204 more compared with the previous year — and that reflects, I think, the success of the births, deaths and marriages project supported by the Coroners Court in identifying deaths that should have been reported by doctors that previously were not.

A number of education and training activities have been undertaken in relation to the new Coroners Act, and this gets to parts of the question that you raised, in particular education targeted at medical practitioners and hospitals has significantly increased the rate of reporting from within the health sector. Also it is likely that some of the variance can be explained by Victoria's increasing aged population. I guess that explains some of the increased workload of the Coroners Court.

As far as the budget is concerned, there has already been a substantial increase in funding to the Coroners Court. In fact in 2007–08 funding of $43 million was provided to implement the key recommendations of the Law Reform Committee's review to improve delivery of coronial services.

To build on those advances, a further $61.8 million was provided in 2008–09 to upgrade mortuary facilities and forensic services including $38 million to rebuild the mortuary services building, provide extended services and provide additional pathologists. In late May last year the Victorian Institute of Forensic Medicine advised that it had been successful in receiving funding — not budget funding — of $13 million from the Australian government for the new Donor Tissue Bank of Victoria on the current site of the SCSC. So substantial funding was allocated to the Coroner's Court including capital funding and recurrent funding to implement the measures.

In relation to the workload of the Coroner's Court, Victoria has had the second-highest lodgement and finalisation figures behind New South Wales. It also has a significantly greater number of pending cases than any other state: more than double that of the next highest, New South Wales. But the backlogs in Victoria, and I think I have explained some of the reasons for those backlogs, compare more favourably with the proportion of cases pending for more than 12 months, being the fourth highest at 28.3 per cent.

More work needs to be done to improve clearance rates at the Coroner's Court. Substantial resources have already been put into the Coroner's Court to ensure that the recommendations that have been made can be implemented. There has been a total change of culture at the Coroner's Court, and I think coroners from around the world have praised the work that the Victorian coroners did in collaboration with a whole range of other agencies in relation to Black Saturday.

I spoke earlier about the royal commission's hearing rooms, and I expect that there would also be some push from most jurisdictions, including the coroner, also to get access to those rooms.

Ms PENNICUIK — May I seek clarification?

The CHAIR — Yes, quickly, please.

Ms PENNICUIK — Obviously, the tragedies of Black Saturday and the heatwave deaths coincided with the new act, which was not foreseen. So I am wondering whether there was, under any of the bushfire allocations, extra allocations to the Coroner's Court over and above what was already envisaged to implement the new act.

Mr HULLS — I am told that the answer to that is yes. The exact figure, I will get to you.

The CHAIR — You can take that matter on notice.

Ms GRALEY — Thank you. Attorney-General, I would like to hear some information about the mental health lists. I know I said in the Parliament not so long ago that I think that for families that have people with mental health problems, and friends of people who have mental-health problems, one of the great fears that they may have is that they may have some sort of incursion with the law.

I would like to refer you to budget paper 3, page 146, in relation to the output measure entitled 'Court matters and dispute resolution', and ask: what reforms are being introduced to Victorian courts to deal with mental health matters in the future?

Mr HULLS — It is a good question. Obviously, as you head into an election year — let's be frank — there is a law and order debate and it is pretty simplistic to have simplistic grabs in relation to law and order that might resonate for a couple of seconds — —

Mr DALLA-RIVA — He does it all the time; he should stop it.

The CHAIR — Without assistance, please.

Mr HULLS — They might resonate for a couple of seconds but do not actually address the causes of crime; addressing the causes of crime is the best thing you can do for victims. The view I take of our justice system is that it should be a holistic system that punishes people, absolutely, but also attempts to divert them away from the criminal justice system; one that supports victims of crime and can be used as a positive intervention along the pathways taken by people who come before our courts.

That is a fairly complex thing to get up in a simple grab; it is easier to say, 'Mandatory sentencing is the answer: lock people up and throw away the key; that will solve everything'. That is just a nonsense because if you go to the Neighbourhood Justice Centre on any given day, a person is appearing before the court because they have been charged with a burglary. Why have they committed burglary? They committed the burglary because they have a drug issue; they have got a drug issue because they are homeless; they are homeless because they are unemployed; they are unemployed because they have a sexually abused family background.

All those things need to be addressed, in my view, before you are going to ensure that that person does not go back before the court again. You can lock up that person and throw away the key and say, 'See, there we are; we are tough on crime', but that does not help victims; that does not help the community, because they might not go into jail with a CV, but they will certainly come out with one.

Ms PENNICUIK — Then why are you abolishing suspended sentences?

Mr HULLS — The reality is that you have to look at these things in a more holistic way. That is why the Assessment and Referral Court, which commenced operations on 21 April, is so crucial to that; it is a specialist court program that will identify the underlying causes of offending for people who have a mental illness or cognitive impairment. It combines a problem solving court with support services for defendants.

The 2009–10 budget allocated $13.8 million over four years for the list, comprising $10.9 million in new funding and $2.9 million of re-prioritisation of existing resources. The funding provides for a dedicated magistrate and court support staff. John Lesser, who is an expert in this area, has been appointed as the magistrate for this list.

Eight additional staff are to be employed by the Magistrates Court to provide support for list participants, brokerage funds are to be provided for the purpose of specialised assessment and services, and extra funding is to be provided for Victoria Legal Aid to provide a duty lawyer and also for external evaluation.

The list aims to work with some 300 defendants each year. I have seen models from right around the world, including in South Australia; it is a much better model because an assessment will take place there and then at court — the first available opportunity. A person will receive assistance and treatment from the day they appear in court, so the court is acting as a positive intervention in people's lives. It will be independently assessed and that assessment will be made public.

I might note, getting back to the previous question but in line with this, the Coroners Court now employs a mental health case investigator to provide investigative research and assessment expertise in the area of mental health and to assist coroners with cases where mental health issues are evident.

We are seeing more and more cases come before our courts where there are underlying mental health issues. You can either ignore that and say, 'Well, these are simply bad people who have committed offences; lock them up and throw away the key.' — mandatory sentencing. Alternatively, you can try and address their issues in a holistic way and that is what this assessment and referral court is all about.

The CHAIR — Thank you, Attorney-General. The final question in this portfolio is from Dr Sykes.

Dr SYKES — I refer to budget paper 3, page 148, the infringement and orders management output group, and to the article in the *Herald Sun* of 15 May that revealed that prisoners in jail for crimes including murder, armed robbery and sex offences are being given a gift from the taxpayer of being let off their fines for matters such as traffic infringements at the rate of $116.82 a day while they are behind bars, and that other fine defaulters are also being allowed to apply to be put behind bars and then clear their fines at the same rate while sitting around in jail at the taxpayers expense, and I ask: how much did Victorian taxpayers give away to criminals last financial year by allowing them off their fines when they go to jail for another offence; how much were other fine defaulters allowed to wipe off last financial year by applying to sit around in jail, and what was the cost of providing them with free accommodation in jail while they did so; and what are the amounts that you have budgeted for each of these items in the current financial year and 2010–11?

The CHAIR — That is probably one to be largely put on notice, unless you have things on — —

Mr HULLS — No, I would simply say this: it has always been the case that a person who is serving a jail sentence and has fines accumulated can serve the time and pay off the fine concurrently. That is nothing new; that has always been the case.

Mr WELLS — Where is the punishment?

Mr HULLS — That has always been the case.

Mr WELLS — There is no punishment.

Members interjecting.

The CHAIR — In terms of any detail, the Minister can take that on notice. I thank Mr Griffin for his attendance.

Witnesses withdrew.